

**FILED**

Oct 21 2008, 10:24 am

*Kevin L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

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**IN THE  
COURT OF APPEALS OF INDIANA**

[illegible]

No. 53A01-0712-JV-592

APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable David L. Welch, Judge  
Cause No. 53C07-0706-JC-414

**KIRSCH, Judge**

Kevin G. (“Kevin”) appeals the juvenile court’s dispositional order in the adjudication of his daughter, K.G., as a child in need of services. The following restated issues are presented for our review:

- I. Whether the juvenile court’s dispositional order is deficient in that it exceeds statutory authority and fails to include reasons to support the disposition; and
- II. Whether there was sufficient evidence to support the juvenile court’s judgment.

We reverse.

### **FACTS AND PROCEDURAL HISTORY**

A family case manager of the Monroe County Department of Child Services (“DCS”) interviewed K.G. and her mother to investigate allegations that Kevin, K.G.’s father, was sexually abusing K.G. when she was with him for visitation. K.G. maintained that Kevin had touched her inappropriately and that the touching was not the result of a spanking. Following the investigation, the DCS filed a petition (“CHINS petition”) alleging that K.G. was a child in need of services. K.G.’s mother supported the filing of a CHINS petition.

At the fact-finding hearing, the DCS moved to amend the CHINS petition to include a paragraph alleging that K.G. was a child in need of services as defined by Ind. Code §31-34-1-2, and a narrative paragraph in support, alleging that Kevin had spanked K.G. while she was visiting him and that the spanking resulted in marks on K.G.’s buttocks. After the juvenile court accepted the amendments, Kevin admitted that he had spanked K.G. on the buttocks and had not noticed marks initially, but was informed about them by K.G.’s mother a few days later. Ultimately, Kevin admitted in court that K.G. was a child in need of

services. After K.G.'s mother confirmed that Kevin's description of the events was correct, the juvenile court found K.G. to be a child in need of services. There was no testimony from either Kevin or K.G.'s mother about the allegations of sexual abuse.

At the dispositional hearing, the DCS requested that the predispositional report be admitted into evidence "subject, of course, to evidence being presented by all parties." *Appellant's App.* at 26. Kevin did not object to the admission of the report, but did object to the recommendations of the DCS set forth in that report. The juvenile court admitted the report. The DCS had the employee who prepared the predispositional report testify regarding the report's accuracy, about K.G.'s current condition, and about the DCS's recommendations. In particular, DCS recommended that Kevin undergo a sex offender evaluation. On cross-examination, the DCS employee admitted that the report was written prior to the fact-finding hearing and was based upon the plan to seek an admission to the allegations of sexual abuse. No other evidence of the spanking or sexual abuse was introduced at the dispositional hearing.

Kevin objected to the juvenile court accepting the DCS's recommendations, in particular, the recommendation that Kevin undergo a sex offender evaluation. The DCS argued that the recommendations did not have to be limited to the allegations and admissions, but did admit that there was no evidence before the court supporting the sex offender evaluation. Kevin renewed his objection to the evaluation because of a lack of evidence to support it. The juvenile court accepted DCS's recommendations and set the matter for a review hearing. Kevin now appeals.

## **DISCUSSION AND DECISION**

## **I. Statutory Authority**

Initially, we note that the DCS has not filed an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for them. *See Abouhalkah v. Sharps*, 795 N.E.2d 488, 490 (Ind. Ct. App. 2003). We apply a less stringent standard of review with respect to showings of reversible error, and we may reverse the trial court's decision if the appellant can establish prima facie error. *Id.* "Prima facie error, in this context, is defined as 'at first sight, on first appearance, or on the face of it.'" *Id.*

Ind. Code §31-34-20-1 describes the types of dispositional decrees a juvenile court may enter in CHINS cases. The juvenile court may order the child's parent, guardian, or custodian to receive family services. Ind. Code §31-34-20-1(6)(B). "Family services" are defined by statute as services provided to: (1) prevent a child from being removed from a parent, guardian, or custodian; (2) reunite the child with a parent, guardian, or custodian; or (3) implement a permanent plan of adoption, guardianship, or emancipation of the child. *See* Ind. Code §31-9-2-45.

Here, the juvenile court ordered Kevin to undergo sex offender evaluation. There was no admission or finding that Kevin had sexually abused K.G. Therefore, we must conclude that the juvenile court had no authority to require Kevin to submit to the evaluation, and, as a result, erred.

In addition, Ind. Code §31-34-19-10(a)(5) requires the juvenile court to "accompany the court's dispositional decree with written findings and conclusions upon the record concerning . . . [t]he court's reasons for the disposition." Ind. Code §31-34-19-10(b) allows a

juvenile court to incorporate a finding or conclusion from a predispositional report as a written finding or conclusion. However, the juvenile court is required to state the reasons for the disposition. *See* Ind. Code §31-34-19-10(a)(5).

A panel of this court stated as follows in *J.Q. v. Ind. Dep't of Child Servs.*, 836 N.E.2d 961, 966-67 (Ind. Ct. App. 2005):

However, we are also not in the position to read the trial court's mind in regard to its findings of fact. Indiana Code §31-34-19-10(5) requires that the trial court give reasons for its disposition in a CHINS proceeding. Specifically, we are concerned that procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights.

Here, the juvenile court admitted the predispositional report into evidence and incorporated it in the court's order. *Appellant's App.* at 7. The predispositional report contained only allegations of sexual abuse and that the juvenile court had found K.G. to be a child in need of services. The CHINS finding, however, was based upon Kevin's admission that he had spanked K.G. leaving marks on her buttocks. The dispositional report with the predispositional report contained therein, does not meet the requirements of Ind. Code §31-34-19-10(a)(5) because it does not adequately state the juvenile court's reasons for the disposition. We conclude that the juvenile court erred.

## **II. Insufficient Evidence**

Kevin next contends there was insufficient evidence to support the juvenile court's judgment regarding Kevin's need for a sex offender evaluation. When we review the sufficiency of the evidence, we consider only the evidence and reasonable inferences

therefrom that are most favorable to the judgment. *In re A.H.*, 751 N.E.2d 690, 695 (Ind. Ct. App. 2001). We neither reweigh the evidence nor assess the credibility of the witnesses. *Id.*

While the juvenile court adjudicated K.G. to be a child in need of services, this adjudication was based on Kevin's admission to spanking K.G. and leaving marks, an allegation that was included by oral amendment at the fact-finding hearing. Kevin and K.G.'s mother agreed, and the juvenile court found, that K.G. was a child in need of services based upon that admission. Moreover, the predispositional report neglects to outline a plan or make recommendations regarding the admission based on the spanking incident. The dispositional order, on the other hand addresses the allegation of sexual abuse, an allegation that was not substantiated or admitted. Consequently, we find that there is insufficient evidence to support the juvenile court's dispositional order.

Reversed.

VAIDIK, J., and CRONE, J., concur.